



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 25, 2004

Ms. Carol Longoria
Public Information Coordinator
The University of Texas System
201 West 7th Street
Austin, Texas 78701-2902

OR2004-1390

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 196769.

The University of Texas at Austin (the "university") received a request for all contracts, expenditures, information, layouts, or diagrams relating to the construction of the university's tunnel system. You state that the requestor has withdrawn his request for the contracts and expenditure information. You claim that the requested construction diagrams and blueprints are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You also claim that release of the requested information may implicate the proprietary interests of third parties, although you take no position as to whether the information is so excepted. You indicate that you notified third parties of the request and of their right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

¹We assume that the sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. Through the passage of House Bill 9, the Seventy-eighth Legislature added sections 418.176 through 418.182 to chapter 418 of the Government Code. These newly enacted provisions make certain information related to terrorism confidential. You specifically assert that the requested information is confidential under section 418.181, which provides as follows:

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

Gov’t Code § 418.181. The fact that information may relate to a governmental body’s security concerns does not make the information per se confidential under House Bill 9. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions enacted by House Bill 9 must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

In this instance, you state that the university’s underground tunnel system connects all campus buildings, including the university’s power plant, and is used to provide these buildings with utility services. You explain that the requested documents reveal “all the technical aspects necessary to ascertain the tunnels’ entrances, egresses, construction, layout, design, strengths, and potential weaknesses.” You further explain that access to the requested information would allow terrorists “to pinpoint the vulnerable aspects of these utility corridors and buildings, thereby making it easier to disable the entire utility system and bypass building security.” After reviewing your arguments and the submitted information, we find that you have demonstrated that the release of the requested diagrams and blueprints would identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. *See generally* Gov’t Code § 421.001 (defining “critical infrastructure” to “include[] all public or private assets, systems, and functions vital to the security, governance, public health and safety, economy, or morale of the state or the nation”). Thus, the requested information must be withheld from disclosure under section 552.101 in conjunction with section 418.181 of the Government Code.²

²As we are able to make this determination, we do not reach your additional arguments against disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Amy D. Peterson
Assistant Attorney General
Open Records Division

ADP/sdk

Ref: ID# 196769

Enc. Submitted documents

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